

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
JASON DELEON, ANA CARRACA-DELEON, :
ARIELA ROSA MORI-GEHRING, and :
WALTER GEHRING, :
:

Plaintiffs, :
-against- :
:

DOUGLAS DUNAWAY, MARIA LOUISE :
DUNAWAY and MICHAEL DUNAWAY, :
:

Defendants. :
-----X

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DOCUMENT
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DATE FILED: 11/30/2023

22-cv-06039 (NSR)
OPINION & ORDER

NELSON S. ROMÁN, United States District Judge:

Plaintiffs Jason Deleon, Ana Carraca-Deleon, Ariela Rosa Mori-Gehring, and Walter Gehring (collectively “Plaintiffs”), commenced the instant action asserting claims, *inter alia*, sounding in alleged violation of 42 U.S.C. § 1982 for an ongoing campaign of harassment, racial taunts, and intimidation by Douglas Dunaway (“D. Dunaway”), Maria Louise Dunaway (“M.L. Dunaway”), and Michael Dunaway (collectively “Defendants”). (ECF No. 1.) Now before the Court is Plaintiffs’ motion seeking an order substituting Douglas Dunaway as Administrator of the Estate of Maria Louise Dunaway for Defendant M.L. Dunaway. (ECF No. 44.) For the foregoing reasons, the motion is GRANTED without opposition.

Federal Rule of Civil Procedure 25(a)(1) (“Rule 25”) provides, in relevant part: “[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.” Rule 25 establishes a ninety-day period for any party to make a motion to substitute a party for the decedent. *See Kaplan v.*

Lehrer, 173 F. App'x 934, 935 (2d Cir.2006). The ninety-day period can be extended where there is “an inability or a significant difficulty in identifying the decedent’s legal representative or successor.” See *Unicorn Tales, Inc. v. Banerjee*, 138 F.3d 467, 470 (2d Cir.1998). Generally, claims characterized as penal in nature terminate upon a party’s death, while claims characterized as remedial in nature survive. See *U.S. ex rel. Colucci v. Beth Israel Med. Ctr.*, 603 F. Supp. 2d 677, 680 (S.D.N.Y. 2009).

On August 27, 2022, movant, D. Dunaway, the spouse of co-defendant M.L. Dunaway, filed a “Statement” pursuant to Rule 25, along with a Certificate of Death, indicating that M.L. Dunaway had passed. (ECF No. 9.) Thereafter, the Court stayed the proceeding pending the appointment of an administrator of the estate of M.L. Dunaway. (ECF No. 24.) On May 8, 2023, D. Dunaway informed the Court that the Westchester County Surrogate’s Court issued a Certificate of Voluntary Administration of the Estate of Maria Louise Dunaway appointing him as the Administrator. (ECF No. 41.) On May 11, 2023, D. Dunaway filed a copy of the Westchester County Surrogate’s Court Certificate of Voluntary Administration of Marie Louise Dunaway. (ECF No. 43.) Since the claims asserted in this action are remedial in nature the claims survive and the substitution is warranted.

In light of the foregoing, it is hereby ordered that “Douglas Dunaway as the Administrator of Maria Louise Dunaway” be substituted in place of Defendant “Maria Louise Dunaway.” The caption shall read as follows:

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ARIELA ROSA MORI-GEHRING, and	:	
WALTER GEHRING,	:	
	:	
Plaintiffs,	:	22-cv-06039 (NSR)
	:	OPINION & ORDER
-against-	:	
	:	
Douglas Dunaway as the Administrator of Maria	:	
Louise Dunaway, DOUGLAS DUNAWAY and	:	
MICHAEL DUNAWAY,	:	
	:	
Defendants.	:	
-----X	:	

Plaintiff is directed to serve a copy of this Opinion and Order upon the named Defendants by regular mail within 21 days of this order and to file proof of service on the docket. The Clerk of the Court is respectfully directed to terminate the motion at ECF No. 44.

This constitutes the Court's Opinion and Order.

Dated: November 30, 2023
White Plains, New York

SO ORDERED:



NELSON S. ROMÁN
United States District Judge